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CYRUS R. VANCE, JR.
DISTRICT ATTORNEY

February 28, 2012

Mark A. Bederow, Esq.
Law Office of Mark A. Bederow
260 Madison Avenue
New York, N.Y. 10016

Re: People v. Ryan Jerome
Dkt. No. 2011NY070604

Dear Mr. Bederow:

This letter responds to your letter of February 14, 2012, requesting that all charges be dismissed in the above-referenced case. After consideration of the factors you identify, as well as additional facts and circumstances established through a thorough independent investigation, we decline to dismiss this matter. We also continue to believe that the offer of a plea to a misdemeanor, a fine, and community service is appropriate.

As you know, the crime charged involves the defendant's illegal possession of a loaded firearm in a crowded public location, with no intention on his part to turn in the gun permanently to law enforcement officers. Because it appears that Mr. Jerome is licensed in another jurisdiction and his crime was discovered because he attempted to check his gun temporarily at the Empire State Building, after careful consideration we decided to give your client the opportunity to avoid the consequences of what the law ordinarily provides, and communicated that decision to you promptly. The law, as you are aware, subjects Mr. Jerome to a felony conviction and a mandatory minimum term in state prison of 3 ½ years.

But you have asked this Office to go even further, and take extraordinary action in the form of dismissing the case, with no consequence whatsoever to your client. In your letter and elsewhere, you have cited "the nature of Ryan's personal background" as the very first reason in favor of dismissal. Your assertions have made an analysis of Mr. Jerome's personal background crucial to a reasoned consideration of your request.

In relying on Mr. Jerome's military service in support of your request for dismissal, you have strongly implied that that service was honorable and without incident. For example, in your letter dated February 14, 2010, you describe Mr. Jerome as "proudly becoming a third-generation Marine" by enlistment in 2003, and that "[a]fter the conclusion of his military service, Ryan returned home to Indiana." And, when you and your client appeared on television on January 10, 2012, the host of the show stated – without clarification by you or the defendant – that your client was a Marine with an "unblemished record."

This Office has a long and well documented history of valuing and honoring military service to our country. But as Mr. Jerome is well aware, his record of military service, which did not even last 11 months, was not "unblemished." It included multiple unauthorized absences and use of marijuana during his military service, which cumulatively resulted in his Summary Court Martial and an "Other Than Honorable" discharge. That history was relayed by several decorated United States Marines in reports contained in Mr. Jerome's Marine Corps file.

The report of Mr. Jerome's Company Commander to his Battalion Commander is particularly telling. It was filed in support of a recommendation for Mr. Jerome's "Other than Honorable" discharge "as soon as possible":

> PFC Jerome has been with the company, and the battalion, for less than a year, but he has clearly made his mark as one of the few Marines that can keep his platoon, company, and even the battalion jumping through hoops in dealing with his many disciplinary problems. His most serious offense to date was freely admitting he used THC (Marijuana) while being UA [unauthorized absence] for nearly a month. Even before that he was UA from his platoon in October 2003 for several days. He has shown little interest in the welfare of his fellow Marines, and has showed a lack of effort in his day-to-day tasks, which has hurt the moral [sic] in his unit. Clearly PFC Jerome joined the Marine Corps to have someone else look after him, and be paid for the minimal effort and work he performs daily. He has not taken responsibility for his actions, and clearly is motivated to help himself and not his fellow Marines. If he continues his enlistment he will surely continue this pattern of misconduct, and will likely waste valuable time in the company and the battalion to focus on good Marines and preparing for combat.

This record and the circumstances of this entire matter contradict the suggestions of honorable military service and exemplary character. To the contrary, they suggest that he is comfortable placing his self-interest above that of others, including by illegally possessing a loaded firearm in a crowded public location, and allowing his military record to be touted as a reason why he should not have to bear any responsibility for his conduct.

As you are aware, Mr. Jerome's explanation for his conduct in the instant case, that he misinterpreted information posted on an internet site found via a "Google" search on his "smartphone," is plainly not a valid defense to the charge. CPL §15.20(2) (ignorance or mistake of law is no defense unless based on an official written statement or interpretation). All that is required is that he knew he was carrying a firearm, and that the firearm was loaded and operable. There is simply no requirement under New York law that the People prove that he intended to violate a specific New York statute.

But even if true, the proffered excuse suggests a distinct disregard for the responsibilities of a licensed gun owner. Common sense, public safety, the ease with which this information can be readily obtained, and fundamental care for compliance with the law require

that licensed firearm ownership carry a concurrent individual responsibility to ensure – beyond reliance upon the results of a superficial internet search – that the place and manner of possession of a firearm, especially a loaded one, remain lawful. It is telling that the web site on which he claims reliance warns its visitors in no uncertain terms: "You are responsible for validating your own information."[1]

This Office has also considered the other claims you have made in support of dismissal, including the existence in New York of gun amnesty and "buy-back" programs, and your contention that continued prosecution of Mr. Jerome is disproportionate to other cases. These claims, all of which are based on facts and legal principles that are entirely distinguishable from the present case, are unpersuasive. The comparison to publicized law-enforcement buyback programs – where individuals are promised amnesty by prosecutors in advance – is baseless on its face, and even more so because Mr. Jerome has never maintained that he was attempting to relinquish his gun *permanently* to law enforcement officers at the Empire State Building. In fact, on the day in question, Mr. Jerome by his own admission was "checking" his gun with private security so that he could visit the Empire State Building, and was fully planning on retrieving it and continuing his travels on the crowded streets of Manhattan while armed with a loaded firearm.

For all of these reasons, this case does not establish the type of rare and unusual circumstances that cry out for dismissal. They do, however, in the exercise of sound prosecutorial discretion, suggest that a misdemeanor disposition – before indictment – is appropriate. The opportunity to avoid state prison is his; the offer that has been extended will remain open until the matter is presented to a grand jury.

Thank you for your attention in this matter. If you have any questions, require further information, or wish to discuss this matter, please do not hesitate to contact me directly.

Sincerely,

Joseph A. Davis
Assistant District Attorney
(212) 335-4269

cc.: Clerk of the Criminal Court of the City of New York, Part F

[1] *See* www.handgunlaw.us (last accessed Feb. 22, 2012)